

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:

NEW ENGLAND MOTOR FREIGHT, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 19-12809 (JKS)

(Jointly Administered)

**AMENDED DECLARATION OF JOHN BURLACU ON BEHALF OF DONLIN,
RECANO & COMPANY, INC. REGARDING VOTING AND TABULATION OF
BALLOTS ACCEPTING AND REJECTING THE DEBTORS' AND OFFICIAL
COMMITTEE OF UNSECURED CREDITORS' THIRD AMENDED JOINT
COMBINED PLAN OF LIQUIDATION AND DISCLOSURE STATEMENT**

I, John Burlacu, declare, under penalty of perjury to the best of my knowledge, information, and belief:²

1. I am a Senior Director at Donlin, Recano & Company, Inc. ("DRC"), located at 6201 15th Avenue, Brooklyn, New York 11219. I am over the age of 18 years and competent to testify.

2. I submit this Declaration with respect to the solicitation of votes and the tabulation of Ballots cast on the *Debtors' and Official Committee of Unsecured Creditors' Third Amended Joint Combined Plan of Liquidation and Disclosure Statement*, [Docket No. 1023], (as may be amended, supplemented or otherwise modified, the "Plan"). Except as otherwise indicated, all facts set forth herein are based upon my personal knowledge, information supplied to me by the Debtors or their advisors, including DRC, and my review of relevant documents. If

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: New England Motor Freight, Inc. (7697); Eastern Freight Ways, Inc. (3461); NEMF World Transport, Inc. (2777); Apex Logistics, Inc. (5347); Jans Leasing Corp. (9009); Carrier Industries, Inc. (9223); Myar, LLC (4357); MyJon, LLC (7305); Hollywood Avenue Solar, LLC (2206); United Express Solar, LLC (1126); and NEMF Logistics, LLC (4666).

² Capitalized terms not otherwise defined herein shall have the same meanings set forth in the Amended Disclosure Statement.

I were called to testify, I could and would testify competently as to the facts set forth herein on that basis.

3. In accordance with the *Amended Order Granting Debtors' Application for Entry of an Order Authorizing the Debtors to Retain and Employ Donlin, Recano & Company, Inc. as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date* [Docket No. 285], DRC was authorized to assist the Debtors in connection with, *inter alia*, soliciting, receiving, and tabulating Ballots accepting or rejecting the Plan.

I. Service and Transmittal of Solicitation Packages and Related Information.

4. Pursuant to the Plan, holders of Claims in Classes 2A – 2J, 5A, 5B, and 5D as of the Voting Record Date were entitled to vote to accept or reject the Plan (the “Voting Classes”).

CONSOLIDATED NEMF DEBTORS	
Class	Type of Claim
Class 2A	Lender Secured Claims – TD Bank
Class 2B	Lender Secured Claims – East West Bank
Class 2C	Lender Secured Claims – JPMorgan Chase
Class 2D	Lender Secured Claims – Fifth Third
Class 2E	Lender Secured Claims – Santander
Class 2F	Lender Secured Claims – Wells Fargo
Class 2G	Lender Secured Claims – Mercedes Benz
Class 2H	Lender Secured Claims – Volvo

CONSOLIDATED NEMF DEBTORS	
Class	Type of Claim
Class 2I	Lender Secured Claims – Capital One
Class 2J	Lender Secured Claims – Webster Capital
Class 5A	General Unsecured Claims- Other than Lender Deficiency Claims
Class 5B	Auto Liability Claims
Class 5D	General Unsecured Claims – Lender Deficiency Claims

CONSOLIDATED EASTERN DEBTORS	
Class	Type of Claim
Class 2A	Lender Secured Claims – TD Bank
Class 2B	Lender Secured Claims – East West Bank
Class 2D	Lender Secured Claims – Fifth Third
Class 2E	Lender Secured Claims – Santander
Class 2F	Lender Secured Claims – Wells Fargo
Class 2G	Lender Secured Claims – Mercedes Benz
Class 2I	Lender Secured Claims – Capital One
Class 2J	Lender Secured Claims – Webster Capital

CONSOLIDATED EASTERN DEBTORS	
Class	Type of Claim
Class 5A	General Unsecured Claims- Other than Lender Deficiency Claims
Class 5B	Auto Liability Claims
Class 5D	General Unsecured Claims – Lender Deficiency Claims

5. The procedures for the solicitation and tabulation of votes on the Plan are set forth in the *Order (I) Approving on an Interim Basis the Adequacy of Disclosures in the Joint Combined Plan and Disclosure Statement, (II) Scheduling the Confirmation Hearing and Deadline for Filing Objections, (III) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Joint Combined Plan and Disclosure Statement, and Approving the Form of Ballot and Solicitation Package, and (IV) Approving Notice Provisions* [Docket No. 1008] (the “Conditional Approval and Procedures Order”). DRC was instructed to solicit, review, determine the validity of, and tabulate Ballots submitted to vote for the acceptance or rejection of the Plan by the holders of Claims in the Voting Classes in accordance with the Conditional Approval and Procedures Order.

6. On or around November 21, 2019, DRC posted links on the Debtors’ restructuring website maintained by DRC at <https://www.donlinrecano.com/Clients/nemf/Index> to provide parties with access to, among other documents, copies of the Plan, the Conditional Approval and Procedures Order, and the Confirmation Notice (as defined in the Plan).

7. In accordance with the Conditional Approval and Procedures Order, on November 21, 2019, DRC caused (a) Solicitation Packages to be distributed to holders of Claims in the Voting Classes as of the Voting Record Date, and (b) non-voting notices to be distributed

to holders of Claims and Interests in the non-voting Classes. Proof of service of the Solicitation Packages and non-voting packages are set forth in the *Affidavit of Donlin, Recano and Company, Inc. Regarding Service of Solicitation Packages with Respect to Debtors and Official Committee of Unsecured Creditors' Third Amended Joint Combined Plan of Liquidation and Disclosure Statement* [Docket No. 1036] and *Supplemental Affidavit of Donlin, Recano and Company, Inc. Regarding Service of Solicitation Packages with Respect to Debtors' and Official Committee of Unsecured Creditors' Third Amended Joint Combined Plan of Liquidation and Disclosure Statement* [Docket No. 1073].

II. General Tabulation Process.

8. As specified in the Conditional Approval and Procedures Order, November 15, 2019 (the “Voting Record Date”) (the date the Conditional Approval and Procedures Order was entered), was established as the record date for determining the holders of Claims in the Voting Classes entitled to vote to accept or reject the Plan.

9. Pursuant to the Conditional Approval and Procedures Order, DRC relied on the following information to identify and solicit holders of Claims in the Voting Classes: (a) the Debtors' Schedules of Assets and Liabilities and Statements of Financial Affairs filed with the Court on April 5, 2019 [Case No. 19-12809, Docket Nos. 410 and 411; Case No. 19-12812, Docket Nos. 10 and 11; Case No. 19-12815, Docket Nos. 4 and 5; Case No. 19-12818, Docket Nos. 4 and 5; Case No. 19-12820, Docket Nos. 5 and 6; Case No. 19-12821, Docket Nos. 4 and 5; Case No. 19-12824, Docket Nos. 4 and 5; Case No. 19-12826, Docket Nos. 4 and 5; Case No. 19-12827, Docket Nos. 4 and 5; Case No. 19-12828, Docket Nos. 6 and 7; Case No. 19-12830, Docket Nos. 6 and 7] and amendments thereto, filed with the court on May 7, 2019 [Case No. 19-12809, Docket No. 550; Case No. 19-12812, Docket No. 12] and on August 26, 2019 [Case No. 19-12809, Docket No. 822; Case No. 19-12812, Docket No. 15] and on December 18, 2019

[Case No. 19-12809, Docket No. 1081]; (b) the official claims register maintained by DRC as of November 15, 2019; (c) claims information pertaining to the Debtors chapter 11 cases as reflected in DRC's internal database to which this information was loaded; and (d) other information and instructions provided by the Debtors' and/or their advisors. Using this information, and with guidance from the Debtors and their advisors, DRC created a voting database reflecting the name, address, voting amount, and classification of Claims in the Voting Classes. Using this voting database and the forms of Ballots approved under the Conditional Approval and Procedures Order, DRC generated Ballots for holders of Claims entitled to vote to accept or reject the Plan.

10. Ballots returned by electronic mail, regular mail, hand delivery, or overnight delivery were received by personnel of DRC at its office in Brooklyn, New York. Ballots received by DRC were processed in accordance with the Conditional Approval and Procedures Order. Upon receiving Ballots, DRC took the following actions:

- a. The envelopes containing the Ballots were opened, and the contents were removed and stamped with the date and time received. Each Ballot was then scanned into DRC's system and sequentially numbered (the "Sequence Number");
- b. Ballots attached to electronic mail were opened, and a copy of the Ballot and the electronic mail were printed in hard copy format. Each Ballot was then scanned into DRC's system and assigned a Sequence Number; and
- c. DRC then entered into a computer database all pertinent information from each of the Ballots, including among other things, the date and time the Ballot was received, the Sequence Number, the voting dollar amount, and whether the creditor submitting the Ballot voted to accept or reject the Plan.

11. In order for a Ballot to be counted as valid, the Ballot must have been properly completed in accordance with the Conditional Approval and Procedures Order and executed by the relevant holder, or such holder's authorized representative, and must have been actually received by DRC by 4:00 P.M. (Prevailing Eastern Time) on December 18, 2019 (the "Voting

Deadline”). All Ballots were to be delivered to DRC as follows: (a) if by hand delivery, or overnight courier, to Donlin, Recano & Company, Inc., Re: New England Motor Freight, Inc. et al., Attn: Voting Department, 6201 15th Avenue, Brooklyn, New York 11219; (b) if by First Class mail, to Donlin, Recano & Company, Inc., Re: New England Motor Freight, Inc. et al., Attn: Voting Department, P.O. Box 192016 Blythebourne Station, Brooklyn, NY 11219; or (c) if by electronic mail to Balloting@DonlinRecano.com with “NEMF Vote” in the subject line using a format of the attachment that can be found in common workplace and industry standard format (i.e. industry-standard PDF file).

12. All validly executed Ballots cast by holders of Claims in the Voting Classes received by DRC on or before the Voting Deadline were tabulated as outlined in the Conditional Approval and Procedures Order.

13. DRC is in possession of the Ballots received by it, and copies of the same are available for review during DRC’s normal business hours at 6201 15th Avenue, Brooklyn, New York 11219.

III. The Voting Results

14. The results of the aforesaid tabulation of properly executed Ballots received on or before the Voting Deadline are set forth below and in the report annexed hereto as **Exhibit A** (the “Final Tabulation Results”).

CLASS	TOTAL BALLOTS RECEIVED			
	Accept		Reject	
	AMOUNT (% of Amount Voted)	NUMBER (% of Number voted)	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)
Class 2A-Lender Secured Claims – TD Bank against Consolidated NEMF Debtors	\$7,378,313.00 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2B - Lender Secured Claims – East West Bank against Consolidated NEMF Debtors	\$6,329,636.00 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2C-Lender Secured Claims – JPMorgan Chase against Consolidated NEMF Debtors ³	\$0.00 (100.00%)	0 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2D-Lender Secured Claims – Fifth Third against Consolidated NEMF Debtors	\$ 5,313,153.00 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2E-Lender Secured Claims – Santander against Consolidated NEMF Debtors	\$4,351,274.00 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2F-Lender Secured Claims – Wells Fargo against Consolidated NEMF Debtors	\$2,732,155.00 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2G-Lender Secured Claims – Mercedes Benz against Consolidated NEMF Debtors ⁴	\$0.00 (100.00%)	0 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2H-Lender Secured Claims – Volvo against Consolidated NEMF Debtors	\$1,094,318.00 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)

³ DRC did not receive any Ballots from holders of Claims in Sub-Class 2C – Lender Secured Claims – JPMorgan Chase against Consolidated NEMF Debtors

⁴ DRC did not receive any Ballots from holders of Claims in Sub-Class 2G-Lender Secured Claims – Mercedes Benz against Consolidated NEMF Debtors

CLASS	TOTAL BALLOTS RECEIVED			
	Accept		Reject	
	AMOUNT (% of Amount Voted)	NUMBER (% of Number voted)	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)
Class 2I-Lender Secured Claims – Capital One against Consolidated NEMF Debtors	\$1,432,250.00 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2J-Lender Secured Claims – Webster Capital against Consolidated NEMF Debtors ⁵	\$0.00 (100.00%)	0 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 5A-General Unsecured Claims- Other than Lender Deficiency Claims against Consolidated NEMF Debtors	\$14,980,537.09 (99.97%)	171 (97.71%)	\$3,871.50 (0.03%)	4 (2.29%)
Class 5B-Auto Liability Claims against Consolidated NEMF Debtors	\$16.00 (84.21%)	15 (83.33%)	\$3.00 (15.79%)	3 (16.67%)
Class 5D-General Unsecured Claims – Lender Deficiency Claims against Consolidated NEMF Debtors	\$ 29,857,725.74 (100.00%)	7 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2A-Lender Secured Claims – TD Bank against Consolidated Eastern Debtors	\$334,230.00 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2B-Lender Secured Claims – East West Bank against Consolidated Eastern Debtors	\$554,740.00 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2D-Lender Secured Claims – Fifth Third against Consolidated Eastern Debtors	\$ 2,803,401.00 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)

⁵ DRC did not receive any Ballots from holders of Claims in Sub-Class 2J-Lender Secured Claims – Webster Capital against Consolidated NEMF Debtors

CLASS	TOTAL BALLOTS RECEIVED			
	Accept		Reject	
	AMOUNT (% of Amount Voted)	NUMBER (% of Number voted)	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)
Class 2E-Lender Secured Claims – Santander against Consolidated Eastern Debtors	\$2,596,168.59 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2F-Lender Secured Claims – Wells Fargo against Consolidated Eastern Debtors	\$900,534.00 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2G-Lender Secured Claims – Mercedes Benz against Consolidated Eastern Debtors ⁶	\$0.00 (100.00%)	0 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 2I-Lender Secured Claims – Capital One against Consolidated Eastern Debtors	\$759,464.82 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 5A-General Unsecured Claims- Other than Lender Deficiency Claims against Consolidated Eastern Debtors	\$670.37 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 5B-Auto Liability Claims against Consolidated Eastern Debtors	\$1.00 (100.00%)	1 (100.00%)	\$0 (00.00%)	0 (00.00%)
Class 5D-General Unsecured Claims – Lender Deficiency Claims against Consolidated Eastern Debtors	\$ 56,960,734.90 (100.00%)	7 (100.00%)	\$0 (00.00%)	0 (00.00%)

⁶ DRC did not receive any Ballots from holders of Claims in Sub-Class 2G-Lender Secured Claims – Mercedes Benz against Consolidated Eastern Debtors

15. Any Ballot not bearing a signature was excluded from the Final Tabulation Results and was assigned a defect code “A” for failure to satisfy the requirements for a valid Ballot as set forth in the Conditional Approval and Procedures Order.

16. A complete list of all defective Ballots with explanatory defective codes is set forth on **Exhibit B**.

17. At Debtors’ counsels’ direction, the Voting Deadline was extended for JP Morgan Chase, Capital One NA, Fifth Third Bank, and Wells Fargo Equipment Finance Inc. to accommodate request of various lenders.

I declare under penalty of perjury that the foregoing is true and correct and to the best of my knowledge, information and belief.

Dated: January 13, 2020
Brooklyn, New York

/s/ John Burlacu
John Burlacu, Senior Director
Donlin, Recano & Company, Inc.